BILL NO. S-87-04-05

SPECIAL ORDINANCE NO. S-7687

ORDINANCE DESIGNATING THE BOARD OF PUBLIC WORKS AND SAFETY AS LEASING AGENT FOR THE CITY OF FORT WAYNE, INDIANA; APPROVING THE LEASE OF CERTAIN PROPERTY BY THE CITY OF FORT WAYNE MUNICIPALLY OWNED UTILITIES; APPROVING A FORM OF LEASE; AUTHORIZING ACCEPTANCE OF A LESSOR; AND APPROVING OTHER ACTIONS WITH RESPECT THERETO.

WHEREAS, the City of Fort Wayne's municipally owned utilities need to acquire an extensive number of items of personal property for continued effective operations; and

WHEREAS, the Board of Public Works and Safety has, in the past, generally coordinated the acquisition of items of personal property and has let bids therefore; and

WHEREAS, numerous bids have been let for the acquisition of items of personal property, and this Common Council has approved the acquisition of said items of personal property; and

WHEREAS, this Common Council now deems it in the public interest to lease said items of personal property rather than purchase said items; and

WHEREAS, sufficient net revenues are available from the City's municipally owned utilities to make lease rental payments on a timely basis as required for the leasing of said property; and

WHEREAS, a form of lease with option to purchase has been reviewed and is deemed appropriate for the lease of said items of personal property by the City's utilities; and

WHEREAS, notices will be published requesting proposals from lessors to acquire the items of personal property and to lease same to the City's utilities, pursuant to the terms and conditions contained in the form of lease; and

WHEREAS, the proposed lease provides for fair and reasonable rental and other equitable terms and conditions and, further, that the execution of said lease will permit the use and acquisition of said property within the present financial capabilities of the

City's utilities and therefore same is in the public interest.

NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. This Common Council finds that the Board of Public Works and Safety should be and hereby is designated as the leasing agent for the City of Fort Wayne, Indiana and its utilities for the transactions herein contemplated.

SECTION 2. The Common Council of the City of Fort Wayne hereby authorizes the City's utilities to lease, as lessees, those items of personal property listed on the attached Exhibit "A", made a part hereof. It is understood that the exact lessor purchase costs for such items of personal property listed on the Exhibit "A" shall be determined in accordance with bidding procedures of this City and accordingly subject to approval by this Common Council, however, the gross cost for such purchases shall not exceed Four Million Dollars ($4,000,000).

SECTION 3. The form of the lease, with option to purchase, for said lease is attached hereto as a part hereof, as Exhibit "B". This form of lease, with option to purchase, shall be used by the City's utilities for the transactions herein contemplated and said form of lease is hereby approved and ratified. This lease form may be modified only to the extent that such modifications are not material in form or consideration. Authority is hereby given for the Board of Public Works and Safety to enter into the lease upon the determination by the City Attorney and Bond Counsel.

SECTION 4. The Board of Public Works and Safety of the City of Fort Wayne is hereby empowered and authorized to award lessor rights to the most responsive and responsible bidder.

SECTION 5. The Mayor and the Board of Public Works and Safety are empowered and authorized to execute, on behalf of the City's utilities, leases and other documents as contemplated herein with the lessor so selected.

SECTION 6. This Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

Councilmember

APPROVED AS TO FORM AND LEGALITY.

Bruce O. Boxberger, City Attorney
Dated this 1st day of April, 1987.

FOX RIVER BOND
25% COTTON

Read the first time in full and on motion by Eisbart seconded by Talarico, and duly adopted, read the second time by title and referred to the Committee Finance (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19____, at _____ o'clock ____.M.,E.S.T.

DATE: 4-14-87

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Eisbart seconded by Stier, and duly adopted, placed on its passage. PASSED ~~(LOST)~~ by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
TOTAL VOTES	8	1			
BRADBURY	✓				
BURNS	✓				
EISBART	✓				
GiaQUINTA	✓				
HENRY	✓				
REDD	✓				
SCHMIDT		✓			
STIER	✓				
TALARICO	✓				

DATE: 4-28-87

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as ~~(ANNEXATION)~~ ~~(APPROPRIATION)~~ (GENERAL) (SPECIAL) ~~(ZONING MAP)~~ ORDINANCE ~~(RESOLUTION)~~ NO. S-76-87 on the 28th day of April, 19 87,

ATTEST:

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

(SEAL)

Mark E. Giaquinta
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 29th day of April, 19 87, at the hour of 11:30 o'clock A.M.,E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 1st day of May, 19 87, at the hour of 4:00 o'clock P.M.,E.S.T.

WIN MOSES, JR., MAYOR

LEASE WITH OPTION TO PURCHASE AGREEMENT

This Lease, made and entered into this _____ day of _____, 198 , by and between a corporation organized under the laws of the State of Indiana and having its principal office in the City of Fort Wayne, Indiana (hereinafter referred to as "Lessor"), and the CITY OF FORT WAYNE, a municipal corporation of the State of Indiana by its Board of Public Works and Safety, as Leasing Agent (hereinafter referred to as "Lessee"),

WITNESSETH:

That in consideration of the mutual agreements herein contained, the parties do hereby covenant to and with each other as follows:

1. Property Description. The Lessor does hereby lease to the Lessee the property described in "Exhibit A" attached hereto and made a part hereof, which property is hereinafter referred to as the "Leased Equipment".

2. Term of Lease. The term of this Lease shall commence on the _____ day of _____, 1986, or on or after the day of delivery of the Leased Equipment to the Lessee and the acceptance of the Leased Equipment by the Lessee, whichever date or day is later, and unless earlier terminated pursuant to the provisions of this Lease, the Lease shall continue until the date of the final Lease payment as set forth in "Exhibit B" attached hereto and made a part hereof.

3. Rent. Lessee shall pay the Lessor the amount set forth in Exhibit B hereto under the column headed "Lease Payment Amount", in cash or certified check, quarterly, beginning on the _____ day of _____ 198 , and continuing for the term hereof as set forth in

Exhibit B hereto as rental paid in arrears for the Leased Equipment. Said Lease payments shall be paid to Lessor at such address as Lessor shall indicate to the Lessee. It is agreed that such Lease payments shall be due and owing to Lessor for the Lessee's use of the Leased Equipment.

4. Option to Purchase. The Lessor hereby grants to Lessee the right and option, upon not less than sixty (60) days advanced written notice to Lessor, to purchase said Leased Equipment on any rental payment date as set forth in Exhibit B, at a purchase price equal to the amount set forth on Exhibit B entitled "Option to Purchase Value" after taking into account the Lease Payment set opposite the "Option to Purchase Value" having been made.

In the event the Lessee has not exercised the foregoing option to purchase the Leased Equipment at the expiration of this rental contract, the Lessee will quit and surrender the said Leased Equipment in as good a condition as wear and tear will permit, or may purchase, providing the rental payments have been made as heretofore provided in this contract, said Leased Equipment for the additional sum of One Dollar ($1.00) cash.

If the Lessee exercises its option to purchase as provided in paragraph four (4) herein, the Lessor, upon payment of the purchase price, will deliver to Lessee a good and unencumbered title to the Leased Equipment herein described.

5. Taxes, Permits. Lessee agrees to pay as additional rent and to indemnify and hold Lessor harmless from, all license, sales, use, personal property, excise or other taxes together with any penalties, fines or interest thereon imposed or levied with respect to the Leased

Equipment or its possession, use or operation by Lessee. Lessee further agrees to provide all permits and licenses necessary for the installation, operation and use of the Leased Equipment and to comply with all the applicable laws, rules, regulations and ordinances.

6. Location and Use. The Leased Equipment shall be held at and not removed from the general area of Lessee, other than in the course of an emergency, without the Lessor's written consent. Lessee will not use, operate or maintain the Leased Equipment improperly, carelessly, or in violation of any applicable law.

7. Repairs. Lessee, at its own cost and expense, shall maintain the Leased Equipment in good operating condition, repair and appearance, ordinary wear and tear excepted. At its own cost and expense, Lessee shall further replace any and all parts and devices which may from time to time become worn out. All such replacement parts and devices shall accrue to the Leased Equipment and become the property of the Lessor. The Lessor shall not be liable or responsible for any loss, damage, liability or expense of any kind caused by or related to the Leased Equipment, or resulting from any defect in or deficiency of the Leased Equipment, or resulting from the use or operation of the Leased Equipment.

8. Liens. Lessee shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or claim on or with respect to the Leased Equipment or any interest therein. The Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time.

9. Damage or Destruction of Leased Equipment, Abatement of Rent.

(a) In the event the Leased Equipment is lost, stolen, or partially or totally destroyed, whether by fire or other casualty, so as to render the Leased Equipment unfit, in whole or in part for the use intended by Lessee, it shall then be the obligation of the Lessee to restore, repair, replace or rebuild the Leased Equipment as promptly as may be done, unavoidable strikes and other causes beyond the control of the Lessee excepted; provided, however, that Lessee shall not be obligated to expend on such restoration, repair or rebuilding more than the amount of proceeds received by the Lessee from the insurance provided for in paragraph ten (10) hereof. In the event the Leased Equipment is so lost, stolen or partially or totally destroyed, the rent shall be abated for the period during which the Leased Equipment or any part thereof is lost, stolen or partially or totally destroyed, and unfit and unusable for the use intended.

In the event Lessee fails or elects not to repair or replace or restore such Leased Equipment, within sixty (60) days after it has been lost, stolen or partially or totally destroyed, then the Lessee shall then pay to Lessor the insurance proceeds provided for in paragraph ten (10) hereof. Lessee shall pay such amount within thirty (30) days from the date of Lessee's failure or election not to repair, replace or restore the Leased Equipment, or within ninety (90) days from the date such equipment was lost, stolen or partially or totally destroyed. Lessor shall thereupon present Lessee with properly executed instruments of title and bill of sale to such Leased Equipment, and Lessee shall be

entitled to title and possession of such Leased Equipment as-is, where-is, without warranty, express or implied, with respect to any matter whatsoever except that such Leased Equipment shall not be subject to any lien or encumbrance created or arising through Lessor.

(b) No loss or damage to the Leased Equipment or any part thereof shall impose any obligation on Lessor under this agreement. Lessee assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to the Leased Equipment and for injuries or deaths of persons and damage to property, howsoever arising from or incident to the use, operation or storage of the Leased Equipment, whether such injury or death be with respect to agents or employees of the Lessee or of third parties, and whether such damage to property be to Lessee's property or the property of others.

10. Insurance. At its own expense, Lessee shall cause casualty insurance to be carried and maintained with respect to the Leased Equipment and shall carry public liability and property damage insurance sufficient to protect the full value of the Leased Equipment and protect the Lessor from liability in all events. The amount of insurance coverage on the Leased Equipment shall at times be at least in the amount of the applicable Option to Purchase Value. All such insurance policies shall name both the Lessor and Lessee as insureds. Prior to delivery of the Leased Equipment, Lessee shall furnish to Lessor evidence of such insurance policies, which shall be kept in full force and effect during the term of this Lease.

11. Representations and Warranties. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY, FITNESS

FOR PARTICULAR PURPOSE, OR FITNESS FOR USE OF THE LEASED EQUIPMENT OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE LEASED EQUIPMENT. Lessee agrees that it has selected the Leased Equipment upon its own judgment and expressly disclaims any reliance upon any statements or representations made by the Lessor or any persons on Lessor's behalf. Lessor hereby assigns to the Lessee for and during the Lease term all manufacturer's warranties or guaranties, express or implied, issued on or applicable to the Leased Equipment, and Lessor authorized Lessee to obtain the customary services furnished in connection with such warranties or guaranties at Lessee's expense. LESSOR SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY TYPE OR CHARACTER RESULTING FROM THE USE, MISUSE, OPERATION OR MAINTENANCE OF THE LEASED EQUIPMENT BY THE LESSEE.

Lessee represents and warrants that it has the power to enter into this Lease, that procedures for execution of this Lease required by all applicable laws, regulations and ordinances, including competitive bidding if applicable, have been complied with, and that all Lease payments will be paid out of funds which are legally available for such purposes.

12. Events of Default. Lessee shall be deemed to be in default hereunder upon the happening of any of the following events of default: (a) Lessee shall fail to make any Lease payment, or to pay other payments to be paid hereunder, or (b) Lessee shall fail to keep any such other term, covenant or condition herein. Upon the occurrence of any event of default as specified above, and Lessee shall fail

to remedy such event of default with all reasonable dispatch within a period of thirty (30) days after receipt of notice in writing, then Lessor shall have the right at its option without further demand or notice, to pursue any one or more of the following remedies: (a) re-enter and take possession of the Leased Equipment and sell, lease or sublease it; (b) take whatever action at law or in equity may appear necessary or desirable to collect the payments then due and thereafter to become due to enforce the performance and observance of any obligation, agreement or covenant of the Lessee under this Lease.

13. Defaults. If the Lessee shall default in the payment of any Lease payment or other sums payable to Lessor hereunder, or in the payment of any other sum herein required to be paid for the Lessor, or in the observance of any other covenant, agreement or condition hereof, and such default shall continue for thirty (30) days after written notice to correct the same, then, in any or either of such events, the Lessor may proceed to protect and enforce its rights by suit or suits in equity or at law in any court of competent jurisdiction, whether for specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, or the Lessor, at its option, without further notice, may terminate the interest of the Lessee hereunder, and it shall be lawful for the Lessor forthwith to assume possession of the Leased Equipment and the Lessee covenants to surrender the same forthwith upon demand.

The exercise by Lessor of the above right to terminate this Lease shall not release the Lessee from the performance of any obligation hereunder maturing prior to the Lessor's actual taking of the Leased

Equipment. No waiver by Lessor of any right to terminate this Lease upon any default shall operate to waive such right upon the same or other default subsequently occurring.

14. Assignment. This Agreement, and the obligation of Lessee to make payments hereunder, may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor at any time subsequent to its execution, without the necessity of obtaining the consent of Lessee. Lessor agrees to give notice of assignment to Lessee and upon receipt of such notice Lessee agrees to make all payments to the Assignee designated in the assignment, notwithstanding any claim, defense, setoff or counterclaim whatsoever (whether arising from a breach of this Agreement or otherwise) that Lessee may from time to time have against Lessor, or the Assignee. Lessee agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements which may be reasonably requested by Lessor or its Assignee to protect their interests in the Equipment and in this Agreement. Lessee shall not have the right to assign its right, duties and obligations under this Lease, either in whole or in part, without the prior written consent of Lessor and its Assignee.

15. Title. Upon the assignment of this Lease as set forth in paragraph fourteen (14) hereof, title to the Leased Equipment and any and all additions, repairs, replacements or modifications thereto shall be in the name of the Assignee. The Lessee shall have no right, title or interest in the Leased Equipment or any additions, repairs, replacements, modifications thereto except as expressly set forth in this Lease.

16. Offset. Rentals or other sums payable by Lessee pursuant to this Lease shall not be subject to offset, deduction, counterclaim, or

abatement except as provided herein under paragraph nine (9) hereof or because of restriction of the Lessee's use of the Leased Equipment in breach of the terms of this Lease by Lessor.

17. Termination and Expiration. Lessee agrees to initiate all appropriations necessary to carry out the terms of this Lease, provided, however, that such appropriations shall be subject to the approval of all approving agencies both state and local. In the event of the disapproval of any such appropriation by any such agency, this Lease shall be terminated at the end of the period for which Lease payments have been validly appropriated and paid. Lessee shall give Lessor immediate notice in writing of any such disapproval of appropriations.

Upon termination or expiration of this Lease, the Lessee shall return the Leased Equipment in the condition, repair, appearance and working order required in paragraph seven (7) hereof (unless the Lessee has paid Lessor the then current option purchase price for such Leased Equipment), in the manner as may be specified by Lessor, by delivering the Leased Equipment at Lessee's cost and expense to such place as Lessor shall specify within the continental United States by any appropriate method chosen by Lessee.

Lessee shall obtain all governmental authorizations to permit the return of the Leased Equipment to Lessor, and Lessee shall pay to Lessor such sum as may be necessary to cover replacement of all broken or missing parts.

18. Notice. All notices to be given under this Lease shall be made in writing and mailed to the other party at the following address or at such address as the party may provide in writing from time to time:

LESSOR:

LESSEE: City of Fort Wayne
Board of Public Works
One Main Street
Fort Wayne, Indiana 46802

19. Miscellaneous. The waiver by Lessor of the Lessee's breach of any term, covenant or condition hereof shall not be a waiver of any subsequent breach of the same or any other term, covenant or condition. This Lease, together with the Exhibits hereto, constitutes the entire Agreement between the parties and shall not be modified, altered or changed except in writing. This Lease shall be governed by laws of the State of Indiana and any provision of the Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Lease.

20. Acceptance of Lease. This Lease shall not be binding upon the Lessor until accepted and approved by the Lessor.

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first written above.

LESSOR:

By:_____

LESSEE: CITY OF FORT WAYNE, INDIANA
By Its Board of Public Works
and Safety as Leasing Agent
for the City of Fort Wayne

_____
MAYOR, City of Fort Wayne

_____
Chairman

_____
Member

BILL NO. S-87-04-05

REPORT OF THE COMMITTEE ON FINANCE

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS REFERRED AN (ORDINANCE) ~~(RESOLUTION)~~ DESIGNATING THE BOARD OF PUBLIC WORKS AND SAFETY AS LEASING AGENT FOR THE CITY OF FORT WAYNE, INDIANA: APPROVING THE LEASE OF CERTAIN PROPERTY BY THE CITY OF FORT WAYNE MUNICIPALLY OWNED UTILITIES: APPROVING A FORM OF LEASE: AUTHORIZING ACCEPTANCE OF A LESSOR: AND APPROVING OTHER ACTIONS WITH RESPECT THERETO

HAVE HAD SAID (ORDINANCE) ~~(RESOLUTION)~~ UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID (ORDINANCE) ~~(RESOLUTION)~~

YES	NO
BEN A. EISBART CHAIRMAN	
JAMES S. STIER VICE CHAIRMAN	
CHARLES B. REDD	
DONALD J. SCHMIDT	
SAMUEL J. TALARICO	

CONCURRED IN 4-28-87.

SANDRA E. KENNEDY
CITY CLERK